

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/01/17

DEPT. 85

HONORABLE JAMES C. CHALFANT

JUDGE J. DE LUNA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff NONE

Reporter

8:30 am

BS165860

Plaintiff

Counsel

BALLONA WETLANDS LAND TRUST

NO APPEARANCES

VS

Defendant

SANTA MONICA BAY RESTORATION
COMMISSION

Counsel

170.6 HOGUE - PETITIONER

NATURE OF PROCEEDINGS:

NOTICE OF ENTRY OF JUDGMENT AND JUDGMENT

Pursuant to the "Stipulation for Entry of Final Judgment" having been signed and filed this date, the HEARING ON PETITION FOR WRIT OF MANDATE set on FEBRUARY 6, 2018 is advanced to this date and vacated.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of Judgment and Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: December 1, 2017

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/01/17

DEPT. 85

HONORABLE JAMES C. CHALFANT

JUDGE J. DE LUNA

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170.6 HOGUE - PETITIONER

NATURE OF PROCEEDINGS:

Sherri R. Carter, Executive Officer/Clerk

By:



J. De Luna, Deputy

KURT WEISSMULLER

Deputy Attorney General

300 South Spring Street, Suite 1702

Los Angeles, CA 90013

LAW OFFICES OF BRIAN ACREE

5042 Wilshire Blvd., #38524

Los Angeles, CA 90036

COPY

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Attorney General of California
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Supervising Deputy Attorney General
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KURT WEISSMULLER (SBN 117187)
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Los Angeles, CA 90013
Telephone: (213) 269-6353
Fax: (213) 897-2802
E-mail: Kurt.Weissmuller@doj.ca.gov
*Attorneys for Respondent Santa Monica Bay
Restoration Commission*

CONFORMED COPY
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Superior Court of California
County of Los Angeles

DEC 01 2017

Sherri R. Carter, Executive Officer/Clerk
By: Jennifer De Luna, Deputy

EXEMPT FROM FILING FEES PER
GOV. CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BALLONA WETLANDS LAND TRUST,

Petitioner,

v.

**SANTA MONICA BAY RESTORATION
COMMISSION,**

Respondent.

Case No. BS165860

**STIPULATION FOR ENTRY OF FINAL
JUDGMENT**

Date: N/A
Time: N/A
Dept: 85
Judge: The Honorable James C.
Chalfant
Action Filed: October 14, 2016

Petitioner, Ballona Wetlands Land Trust and Respondent, Santa Monica Bay Restoration Commission, (the "Parties") by and through their attorneys of record, Stipulate as follows:

WHEREAS, on October 14, 2016, Petitioner Ballona Wetlands Land Trust ("BWLTT") filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against Defendant and Respondent Santa Monica Bay Restoration Commission ("SMBRC"), alleging violations of the State Records Management Act and Article 16, Section 6, of the California Constitution;

WHEREAS, on December 13, 2016, ("SMBRC") filed a responsive pleading denying the allegations of BWLT;

1 WHEREAS, in order to preserve this Court's resources, the Parties agreed to participate in
2 this Court's Mandatory Settlement Conference ("MSC") Program;

3 WHEREAS, on September 8, 2017, the Parties participated in a Mandatory Settlement
4 Conference before the Honorable Helen I. Bendix of this Court and agreed upon preliminary
5 settlement terms;

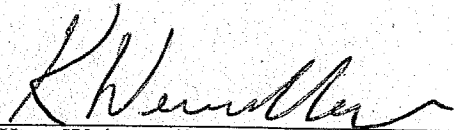
6 WHEREAS, through further efforts by Judge Bendix, the Parties reached an agreement
7 which is memorialized in the Settlement Agreement, attached as "Exhibit A" hereto;

8 WHEREAS, the Parties agree that judgment should be entered in accordance with the
9 Settlement Agreement;

10 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by the Parties hereto,
11 through their undersigned counsel, subject to approval of this Court, that Judgment be entered in
12 this matter in accordance with Exhibit A attached hereto.

13
14 Dated: November 29 2017

Xavier Becerra
Attorney General of California

15
16
17 By: 
18 Kurt Weissmuller
19 Deputy Attorney General
20 *Attorneys for Santa Monica Bay
Restoration Commission*

21 Dated: November 29, 2017

LAW OFFICE OF BRIAN ACREE

22
23
24 By: 
25 BRIAN ACREE
26 *Attorney for Petitioner, the Ballona
27 Wetlands Land Trust*
28

1 [PROPOSED] JUDGMENT

2 Pursuant to the Stipulation of the Parties, Judgment is hereby entered in accordance with the
3 Settlement Agreement entered between the Parties attached as Exhibit A hereto.

4 IT IS SO ORDERED

5 Dated: DEC 01 2017

JAMES C. CHALFANT
HONORABLE JAMES C. CHALFANT
Judge of the Superior Court

**Settlement Agreement Re: Ballona Wetlands Land Trust v. Santa Monica
Bay Restoration Commission (Los Angeles County Superior Court, Case No. BS165860)**

This Settlement Agreement is entered into by and between the Ballona Wetlands Land Trust ("BWLTL") and the Santa Monica Bay Restoration Commission ("SMBRC") (collectively referred to herein as the "Parties"), as of the day all signatures are obtained on this Settlement Agreement ("Effective Date"), with reference to the following facts:

RECITALS

A. WHEREAS SMBRC has entered into a Memorandum of Agreement ("MOA") with the Santa Monica Bay Restoration Foundation, also doing business as the Bay Foundation ("TBF"), a non-profit 501(c)(3) organization, to help implement the Bay Restoration Plan and Annual Work Plans as SMBRC's partner in the Santa Monica Bay National Estuary Program ("SMBNEP"); and

B. WHEREAS, on October 14, 2016, BWLT filed a verified petition for writ of mandate and complaint for declaratory and injunctive relief against SMBRC alleging violations of the California Constitution's prohibition against gifts of public funds and violations of the State Records Management Act; and

C. WHEREAS, on September 8, 2017, BWLT and SMBRC engaged in settlement discussions as part of a Mandatory Settlement Conference conducted by the Honorable Helen Bendix in Department 18, and formed the initial terms of a settlement; and

D. WHEREAS the Parties finalized settlement terms in subsequent settlement discussions; and

E. WHEREAS the Parties agree that it is in their mutual interest to enter into a Settlement Agreement resolving the dispute so as to avoid continued and expensive litigation; however, by this Settlement Agreement, no Party admits any wrongdoing, fault, responsibility or liability, and this Settlement Agreement shall not be construed to be an admission of wrongdoing, fault, responsibility or liability by any Party; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and releases herein contained, the Parties agree as follows:

Settlement Agreement

1. Terms of Settlement Agreement

1.1 At SMBRC's request, the State Water Resources Control Board (SWRCB) shall issue a written statement that office space provided by SWRCB to SMBRC pursuant to SMBRC's enabling legislation is to be used solely to further the implementation of SMBRC's Bay Restoration Plan and its Annual Work Plans.

1.2 SMBRC will include a statement in each Annual Work Plan created after the Effective Date of this Settlement Agreement affirming that the office space provided by SWRCB to SMBRC has been used solely to perform tasks of the SMBNEP as defined by the Bay Restoration Plan and Annual Work Plans.

1.3 SMBRC will work with TBF to amend the MOA to ensure that records created or used by SMBRC or TBF pursuant to implementation of the Bay Restoration Plan or Annual Work Plans are treated as public records and subject to disclosure as may be required by law.

1.4 SMBRC will request that TBF provide training to its employees and consultants concerning the retention of the records described in paragraph 1.3.

1.5 The Parties agree to utilize the dispute resolution procedures in Attachment C of the SMBRC's governing Memorandum of Understanding ("MOU") to attempt collaborative resolution of future disputes.

1.6 Attorney's Fees and Costs:

- a. SMBRC agrees to pay \$15,000.00 to BWLT for attorney's fees and costs incurred by BWLT in this case ("Settlement Funds").
- b. Within 14 days of the execution of this Settlement Agreement, the Office of the Attorney General will submit a claim to the California Department of Finance requesting disbursement of these funds to BWLT pursuant to Government Code section 965, subdivision (b) ("the Claim").
- c. Interest will accrue on the settlement amount of \$15,000.00 at a rate of 7% effective upon entry of a stipulated judgment in this action by the court.
- d. Within 10 days of receipt of the \$15,000.00 plus interest, if any, by BWLT, SMBRC shall be released from all obligations relating to the attorney's fees and costs incurred by BWLT in this case.
- e. If, for any reason, all Settlement Funds are not received by BWLT within twelve months after the date the Claim is submitted to the California Department of Finance, SMBRC stipulates that BWLT may avail itself of any relief available pursuant to Government Code section 965 et seq.

2. Continuing Jurisdiction. The Court retains jurisdiction to enforce the terms of this Settlement Agreement pursuant to Code of Civil Procedure section 664.6. Any party that prevails on any action, motion, or other proceeding to enforce the terms of this Settlement Agreement

may seek to recover reasonable attorneys' fees and costs incurred in the enforcement of this Settlement Agreement.

3. Warranties.

3.1 Each Party represents and warrants that it has the full right and authority to enter into this Settlement Agreement.

3.2 Each Party represents and warrants that by signing this Settlement Agreement it intends that such signature be fully and completely binding upon it.

4. Binding Effect. This Settlement Agreement, and all covenants and releases set forth herein, are binding upon and inure to the benefit of the respective Parties hereto, their legal successors, heirs, assigns, partners, representatives, executors, administrators, agents, attorneys, officers, directors and shareholders. No delay or omissions by any Party to this Settlement Agreement in the exercise of any right or remedy will impair such right or remedy or be construed as a waiver.

5. Choice of Law and Venue. This Settlement Agreement is executed and intended to be performed in the State of California and the laws of California govern its interpretation and effect. The Parties agree that all legal proceedings regarding this Settlement Agreement may be instituted only in Los Angeles County Superior Court.

6. Severability.

6.1 Except with respect to the matters set forth in Paragraph 1, above, in the event a court of competent jurisdiction finds, adjudges or declares that any clause or portion of this Settlement Agreement is invalid, illegal, void, voidable or unenforceable for any reason whatsoever, this Settlement Agreement will be read as if it did not contain said portion or clause.

The Parties intend for any such invalid portion or clause to be severable from the remainder of this Settlement Agreement, and that any such clause or portion and its severance not affect the validity or effect of the remaining provisions of this Settlement Agreement.

6.2 In the event a court of competent jurisdiction finds, adjudges or declares that any clause or portion set forth in Paragraph 1, above, is invalid, illegal, void, voidable or unenforceable for any reason whatsoever, this entire Settlement Agreement will be null and void for any and all purposes whatsoever.

7. Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original and will together constitute one and the same Settlement Agreement.

8. Entire Settlement Agreement. The Parties and undersigned each acknowledge and represent that no promise, representation, or inducement not contained in this Settlement Agreement has been made to them and that this Settlement Agreement contains the entire understanding between the Parties and contains all terms and conditions pertaining to the within compromise and settlement of the disputes referenced herein. No express or implied warranties, covenants or representations have been made concerning the subject matter of this Settlement Agreement unless expressly stated herein. Any prior written or oral negotiations not contained in this Settlement Agreement are of no force or effect whatsoever. In executing this Settlement Agreement, the Parties have not and do not rely on any statements, inducements, promises, or representations made by the other Parties or their agents, representative, or attorneys with regard to the subject matter, basis, or effect of this Settlement Agreement, except those specifically set forth in this Settlement Agreement.

9. No Presumption Against Drafting Party. This Settlement Agreement and the provisions contained herein must not be construed or interpreted for or against any Party hereto because said Party drafted or caused the Party's legal representative to draft any of its provisions. This Settlement Agreement must be construed without reference to the identity of the Party or Parties preparing the same, it being expressly understood and agreed that the Parties hereto participated equally or had equal opportunity to participate in the drafting hereof.

10. Execution of Further Documents. Each Party agrees, upon the reasonable demand of the other, to execute or deliver any instrument, furnish any information, or perform any other act reasonably necessary to carry out the provisions of this Settlement Agreement without undue delay or expense.

11. Notices. Any notice or writing required or permitted to be given pursuant to this Settlement Agreement may be given by mail, or by overnight or personal delivery, to the following persons at the following addresses, unless a party notifies the other in writing of a change in address:

To SMBRC:

Kurt Weissmuller, Deputy Attorney General
Office of the Attorney General
300 Spring Street
Los Angeles, California 90013

To BWLT:

Brian Acree
Law Offices of Brian Acree
5042 Wilshire Blvd #38524
Los Angeles, California 90036

The Parties hereby execute this Settlement Agreement by and through their respective authorized individuals.

Ballona Wetlands Land Trust

11/13, 2017

By

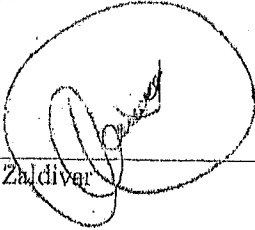


Walter Lamb
President

Santa Monica Bay Restoration Commission

11/17, 2017

By



Enrique Zaldivar
Chair

Approved as to Form:


By:



Brian Acree
Law Offices of Brian Acree
Attorney for Ballona Wetlands Land Trust

Approved as to Form:

By:



Kurt Weissmuller
Deputy Attorney General
Attorney for SMBRC

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Ballona Wetlands Land Trust v. Santa Monica Bay Restoration Commission
(Ballona II)**

No.: **BS165860**

I declare:

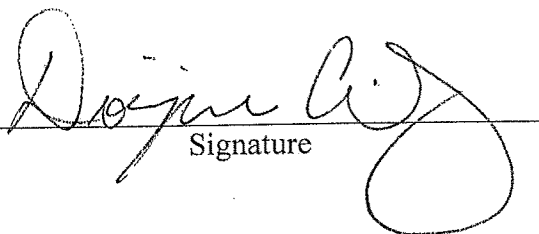
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 30, 2017, I served the attached **STIPULATION FOR ENTRY OF FINAL JUDGMENT** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Brian Acree, Esq.
Law Office of Brian Acree
5042 Wilshire Blvd #38524
Los Angeles, CA 90036
E-Mail: brian@brianacree.com
*Attorney for Plaintiff,
Ballona Wetlands Land Trust*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 30, 2017, at Los Angeles, California.

Dominique Colding
Declarant


Signature

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